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and SAN FRANCISCO ASSOCIATION OF  
12 REALTORS

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 TOP AGENT NETWORK, INC.,

17 Plaintiff,

18 v.

19 NATIONAL ASSOCIATION OF REALTORS;  
20 SAN FRANCISCO ASSOCIATION OF  
REALTORS,

21 Defendants.  
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Case No. 3:20-cv-03198-VC

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: April 18, 2024  
Time: 2:00 p.m.  
Judge: Hon. Vince Chhabria

**VIA ZOOM**

Complaint Filed: May 11, 2020

Pursuant to Fed. R. Civ. P. 26, and Civil L.R. 16-9, Plaintiff Top Agent Network, Inc. (“TAN” or “Plaintiff”) and Defendants San Francisco Association of Realtors (“SFAR”) and National Association of Realtors (“NAR”) (collectively with TAN, the “Parties”) have conferred and respectfully submit this Joint Case Management Statement. The Parties certify that their respective lead trial counsel have met and conferred for the preparation of this statement as required by Civil L.R. 16-3.

### **I. JURISDICTION & SERVICE**

This Court has subject matter jurisdiction under 28 U.S.C. § 1337 (commerce and antitrust regulation) and 28 U.S.C. § 1331 (federal question), as this action arises under Section 1 of the Sherman Act, 15 U.S.C. § 1.

There are no present disputes relating to venue or jurisdiction, and all parties have been served.

### **II. FACTS**

This action arises from the NAR’s adoption of a rule, called the Clear Cooperation Policy (“CCP”), which provides “Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants.” TAN alleges that the CCP is an anticompetitive restraint that has caused TAN injury. Defendants deny this.

The principal factual issues include the impact, if any, of the CCP in relevant markets, including any injury to competition; the impact of the CCP on TAN’s revenues and ability to compete; and whether the CCP is subject to procompetitive justifications.

### **III. LEGAL ISSUES**

The Parties dispute whether the allegations of TAN’s Third Amended Complaint state a valid claim for relief under the Sherman Act, including in particular whether the allegations are accurate, complete, or sufficient to support a finding of antitrust injury and anticompetitive behavior by NAR.

1 **IV. MOTIONS**

2 Defendants filed motions to dismiss TAN’s First, Second and Third Amended Complaints.  
 3 Each of these motions was granted. The Court’s most recent dismissal order was recently vacated  
 4 and remanded by the Ninth Circuit Court of Appeals for reconsideration under a Ninth Circuit  
 5 decision, *The PLS.Com, LLC v. NAR*, No. 21-55164 (9th Cir. 2022) (“*PLS*”), that post-dated this  
 6 Court’s Order. There are no other pending motions.

7 **V. AMENDMENT OF PLEADINGS**

8 Each party reserves the right to move to amend its pleadings as permitted under the Federal  
 9 Rules of Civil Procedure.

10 **VI. EVIDENCE PRESERVATION**

11 The Parties certify that they have reviewed the Guidelines Relating to the Discovery of  
 12 Electronically Stored Information (“ESI Guidelines”), and confirm that they have met and conferred  
 13 pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve  
 14 evidence relevant to the issues reasonably evident in this action.

15 **VII. DISCLOSURES**

16 No initial disclosures have been exchanged.

17 Plaintiff proposes that initial disclosures be exchanged on **May 16, 2024**.

18 Defendants propose that initial disclosures are unnecessary, or at least premature, since the  
 19 Ninth Circuit decision in *PLS* does not impact this Court’s dismissal of TAN’s claims.

20 **VIII. DISCOVERY**

21 The Parties have not yet exchanged any discovery in the present action.

22 The Parties dispute whether discovery even is ripe, as the Parties dispute the impact of the  
 23 Ninth Circuit’s decision and the process they would seek for the Court to resolve that (i.e., whether  
 24 there should be supplemental briefing).

25 Plaintiff intends to pursue discovery on topics including, but not limited to: (1) NAR’s  
 26 creation of and motivations for the implantation and adoption of the CCP; (2) NAR’s understanding  
 27 and analysis, before and after implementation, of the competitive effects of the CCP; (3) the CCP’s  
 28 impact on the market for property listing services, associational memberships, and the residential

1 real estate market; (4) NAR's communications relating to the CCP, internally, to members, and to  
 2 real estate professionals; (5) NAR's ability and authority to control the behavior of NAR members  
 3 and affiliates; (6) the costs associated with listing properties on the MLS; (7) NAR's  
 4 communications and documents relating to TAN and other listing services; (8) the relevant markets  
 5 subject to the CCP; (9) NAR attempts to control or coerce agent behavior; (10) NAR's income from  
 6 MLS and membership fees; (11) the impact of the CCP on TAN and other market participants; and  
 7 (12) the damage to TAN resulting from the CCP.

8 Defendants contend discovery is unnecessary, or at least premature, since the Ninth Circuit  
 9 decision in *PLS* does not impact this Court's dismissal of TAN's claims.

10 The Parties do not presently have any disputes related to privilege. The Parties have not yet  
 11 met or conferred regarding a stipulated proposed protective order. The Parties have not yet met or  
 12 conferred regarding a proposed discovery plan.

13 The Parties do not have any discovery disputes ripe for submission to the Court at this time.  
 14 To the extent any discovery disputes arise, the Parties will address such disputes in accordance with  
 15 the governing federal and local rules, and pursuant to any orders issued by the Court.

## 16 **IX. CLASS ACTIONS**

17 This is not a class action lawsuit.

## 18 **X. RELATED CASES**

19 There are no directly related cases. However, the matter *PLS.Com, LLC v. National*  
 20 *Association of Realtors, et al.*, No. 2:20-cv-04790-JWH-RAO (C.D. Cal.) also involves a plaintiff  
 21 raising antitrust allegations against NAR (and others) relating to the CCP.

22 Plaintiff also believes that a recently announced settlement agreement, following a \$1.8  
 23 billion jury verdict *Burnett v. National Association of REALTORS® et al.*, No. 4:19-cv-00332 (W.D.  
 24 Mo.) may impact this case. *Burnett* also involves NAR's conduct with regard to attempts to regulate  
 25 off-MLS activity.

26 Plaintiff further believes this case may be impacted by a recent ruling by the District of  
 27 Columbia Circuit relating to *National Association of Realtors v. United States of America, et al.* No.  
 28 1:21-cv-02406 (D. D.C.). The Court of Appeals held that the United States Department of Justice

1 was not precluded by a prior consent agreement with NAR from investigating and taking  
 2 enforcement action against NAR relating to the Clear Cooperation Policy. The Department of  
 3 Justice filed an amicus brief in support of TAN when this matter was before the Ninth Circuit.

4 Defendants contend that the jury decision in *Burnett v. National Association of REALTORS®*  
 5 *et al*, No. 4:19-cv-00332 (W.D. Mo) and the D.C. Circuit's decision in *National Association of*  
 6 *Realtors v. United States of America, et al*. No. 1:21-cv-02406 (D. D.C.) covered different issues  
 7 than this case and are unrelated to this Court's dismissal of TAN's claims.

#### 8 **XI. RELIEF**

9 Plaintiff seeks injunctive relief rescinding or modifying the CCP. Plaintiff also seeks  
 10 monetary damages, to be trebled under the Sherman Act, equal to its lost potential revenue resulting  
 11 from promulgation of the CCP. Defendants deny Plaintiff is entitled to any relief.

#### 12 **XII. SETTLEMENT AND ADR**

13 Plaintiff is willing to participate in mediation or other structured settlement discussions.

#### 14 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

15 The Parties have not consented to having a Magistrate Judge conduct all further proceedings  
 16 including trial and entry of judgment.

#### 17 **XIV. OTHER REFERENCES**

18 The Parties do not believe that special procedures, such as a reference to binding arbitration,  
 19 a special master, or the Judicial Panel on Multidistrict Litigation, are warranted at this time.

#### 20 **XV. NARROWING OF ISSUES**

21 The Parties are not aware of any issues for narrowing at this time.

#### 22 **XVI. EXPEDITED TRIAL PROCEDURE**

23 The Parties do not believe this case is appropriate for an expedited schedule through the  
 24 procedures set forth by General Order No. 64.

#### 25 **XVII. SCHEDULING**

26 Plaintiff proposes the schedule provided in **Exhibit A**.

27 Defendants object to the schedule provided by Plaintiff in Exhibit A, and instead request the  
 28 Court set a briefing schedule on the impact, if any, of the Ninth Circuit's decision in *PLS* on this

Court's dismissal. Defendants request simultaneous brief of no more than 5 pages each to be submitted within 30 days of the Case Management Conference. If the Court were to set a further schedule, Defendants contend that the deadlines requested by TAN are unreasonable and shorter than similar cases.

### **XVIII. TRIAL**

Plaintiff has requested trial before a jury. Plaintiff estimates that trial will last approximately 10 days. Defendants believe it is too early to represent a likely trial length to the Court, particularly before the Parties have briefed, and the Court has decided, the applicability of the intervening decision that caused the Ninth Circuit to remand for consideration.

### **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

Each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15.

### **XX. PROFESSIONAL CONDUCT**

All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

### **XXI. OTHER**

None.

Dated: April 11, 2024

LEWIS & LLEWELLYN LLP

By: /s/ Paul T. Llewellyn  
 Paul T. Llewellyn  
 Tobias G. Snyder  
 Attorneys for Plaintiff  
 Top Agent Network, Inc.

Dated: April 11, 2024

COOLEY LLP

By: /s/ Ethan Glass  
 Ethan Glass  
 Attorneys for Defendants  
 National Association of REALTORS®, and  
 San Francisco Association of REALTORS®

**EXHIBIT A – Plaintiff’s Proposed Schedule**

<b>Event</b>	<b>Proposed Date</b>
Initial Disclosures	May 16, 2024
Fact Discovery Cutoff	December 9, 2024
Opening Expert Reports	January 6, 2025
Rebuttal Expert Reports	March 17, 2025
Expert Discovery Cutoff	April 14, 2025
MSJ and <i>Daubert</i> Motions Due	April 28, 2025
Last Day to Hear MSJ, <i>Daubert</i> Motions	June 16, 2025
Joint Pre-Trial Statement	August 18, 2025
Final Pre-Trial Conference	September 15, 2025
Trial	October 6, 2025

**SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this joint case management statement has been obtained from each signatory herein.

Dated: April 11, 2024

LEWIS & LLEWELLYN LLP

By: /s/ Paul T. Llewellyn  
Paul T. Llewellyn